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December 2, 2021

BY: ECF

Honorable James L. Cott
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Kaye v. NYC Health & Hospitals Corp. et al.*, 18-cv-12137 (JPC)(JLC)

Dear Magistrate Judge Cott:

I write to respond to Plaintiff's letter motion, dated November 30, 2021, in which Plaintiff's counsel requests permission to submit a transcription of Plaintiff's recorded deposition testimony for the Court's consideration. *See* ECF No. 189.

As an initial matter. Defendants' stenographer did not record Plaintiff's deposition and thus Defendants are unaware of certified recordings of Plaintiff's deposition that would be otherwise admissible. Further, Defendants did not include in their notice that Plaintiff's deposition would be audio or visually recorded, but specifically indicated that it would be recorded by stenographic means. Nor did Defendants agree to, or receive notice of, a method of recording by other means. *See* FRCP 30(b)(3)(B).

Next, as Defendants have repeatedly stated to Plaintiff, they will provide a certified copy of Plaintiff's deposition once it is received from the reporting company. This morning I spoke with a representative from Defendants' court reporting agency, Diamond/Veritext. I was told that the transcript is not yet completed, but that they anticipated completion by tomorrow, December 3, 2021. Once an electronic copy is received by this Office, I will immediately provide Plaintiff's counsel with a copy of Plaintiff's deposition transcript..

Finally, consistent with Your Honor's ruling [*see* ECF No. 186], Defendants reserve their right to re-petition the Court for additional time to complete Plaintiff's deposition after a review of Plaintiff's deposition transcript. However, given the fact that neither the parties, nor the Court has had an opportunity to review Plaintiff's deposition transcript to determine

whether Defendants have good cause for additional time, coupled with the December 3, 2021 deadline to contact Judge Cronan to seek a pre-motion conference in advance of summary judgment motion practice [see ECF No. 163], Defendants respectfully request a modification of the case management plan as follows:

- Defendants application to the Court for an enlargement of time, if necessary, to complete Plaintiff's deposition due on or before December 10, 2021;
- Plaintiff's deposition on or before December 17, 2021. Defendants' counsel is available on December 13th, 15th, and 17th; and
- Pre-motion conference letter to Judge Cronan due December 24, 2021

We thank the Court in advance for the time and consideration given this request.

Respectfully submitted,

ECF /s/

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cc: Special Hagan (by ECF)